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amongst themselves cannot be said to be a convenient way for all concerned to attain the end aimed at, and is multifarious and should be dismissed on demurrer.

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**TUCKER'S ADM'R V. NORFOLK & WESTERN RAILROAD CO.**—Decided at Richmond, February 6, 1896.—*Harrison, J.*:

1. **RAILROADS**—*Personal injury—Contributory negligence—Proximate cause—Notice—Belief—Care.* In an action against a railroad company for personal injury the plaintiff should recover, notwithstanding his contributory negligence if the injury of which he complains was proximately caused by the omission of the defendant, after such notice of the plaintiff's danger as would put a prudent man on his guard to use ordinary care to avoid the injury. It is not necessary that the defendant should actually know of the plaintiff's danger. It is enough if he have such notice or belief as would put a prudent man on his guard to avoid the injury, and fails to use such care as a prudent man would use under like circumstances.

2. **RAILROADS**—*Trespasser—Foresight—Protection—Notice—Object near track—Duty of company.* A railroad company does not owe the duty of foresight to a trespasser on its track. The duty of protection only arises when it has sufficient notice or reason to believe that he is in danger. The fact that the track is straight for a considerable distance and the line of vision unobstructed, and that an object which is believed to be inanimate is seen lying near the track, does not impose upon the company the necessity of stopping or reducing the speed of its train before reaching the object, in order to ascertain whether it be an animate or inanimate object. If, in the exercise of due care and keeping a constant lookout, the object is not ascertained to be a human being until too late to avert contact with it, the company is not liable for the consequences of such contact.

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**RICHMOND GRANITE CO. V. BAILEY.**—Decided at Richmond, February 6, 1896.—*Keith, P.*:

1. **PERSONAL INJURIES**—*Vice Principal—Fellow-servant—Negligence.* The foreman in charge of a stone quarry, which is being operated by a company, who has general superintendence over the workmen, and makes rules for their guidance and abrogates them at his pleasure; who divides the workmen into squads and appoints foremen for the squads, and who is the highest officer in rank of the company at the quarry, is not a fellow-servant with one of the workmen in the quarry, but occupies to him the relation of vice principal, and the company is liable for injuries inflicted through his negligence. In the case at bar the injury was inflicted through the negligence of such foreman.

2. **MASTER AND SERVANT**—*Safe place to work—Suitable machinery—Rules and regulations.* It is the duty of the master to furnish his employees a safe place in which to do the work assigned to them; to furnish suitable materials and machinery; to establish and promulgate rules which will give them reasonable protection from injury; and to guard them against such accidents and casualties as may be reasonably foreseen. In the case at bar, these duties were either neglected by the company, which would be negligence; or they were entrusted to the fore-

man, which would elevate him above the position of fellow-servant with the workmen.

3. INSTRUCTIONS—*Relevant to evidence—Harmless error.* Instructions must be read and construed in the light of the evidence to which they are addressed, and if, when so considered, it appears that the jury could not have been misled or deceived by them, the judgment should not be reversed, though as abstract propositions they may not accurately state the law.

4. PERSONAL INJURIES—*Declaration—Ignorance of danger—Contributory negligence.* In an action to recover damages for personal injuries the declaration need not allege the plaintiff's ignorance of the danger to which he was exposed. This is in effect an averment that he was not guilty of contributory negligence. Contributory negligence is matter of defence and need not be negated by the plaintiff in his declaration.

COMMONWEALTH v. MYER, Decided at Richmond, January 16, 1896.—*Keith, P.*

1. LICENSE TAX—*Peddlers—Interstate commerce—Discrimination in favor of citizens of the state—Sec. 32, ch. 244, Acts 1889-90 unconstitutional and void.* The State of Virginia has the right to impose a tax on peddlers where it operates uniformly upon all citizens, and does not discriminate in favor of citizens of this State and against citizens of other States, or where the tax imposed is in the exercise of police power and not a regulation of commerce under cover of that power, although incidentally it may have that effect; but where any injurious discrimination is made in favor of the resident against the non-resident, or with respect to the sales of articles manufactured in this State over similar articles manufactured abroad, the law is repugnant to the Constitution of the United States and therefore void. Applying these principles to section 32 of Chapter 244, Public Acts, 1889-90, page 197, the said section is void, because it injuriously discriminates against the products of other States and the rights of other citizens, and is an attempt to fetter commerce among the States, and deprives the citizens of other States of the privileges and immunities possessed by the citizens of this State.

FITCH v. COMMONWEALTH. — Decided at Richmond, February 6, 1896.—*Riely, J.*

1. CRIMINAL PLEADING—*Plea to jurisdiction—Venue—Burden of proof.* A plea in abatement based on the ground that the offence, if committed at all, was committed beyond the jurisdiction of the court is not admissible. That is matter of defence under the general issue of "not guilty." The burden is on the Commonwealth to prove that the offence was committed within the jurisdiction of the trial court.

2. PERJURY—*Indictment—Averment of jurisdiction over case in which perjury committed.* An indictment for perjury which states the substance of the offence, in what court the oath was administered which is charged to have been falsely taken, and avers that the court had authority to administer the same, contains the only averments necessary as to the jurisdiction of the court over the case upon the trial of